## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MOLLY M. SCHWARTZ, *Individually* : Civil No. 4:21-CV-01645

and as Administrator of the Estate of

David E. DeWald, III,

Plaintiff,

v. Judge Jennifer P. Wilson

:

LACKAWANNA COUNTY, et al.,

1 0001111, 01 01..,

Defendants. : Magistrate Judge Arbuckle

## **ORDER**

Before the court is the report and recommendation of United States Magistrate Judge William Arbuckle recommending that the Lackawanna County Defendants' motion to dismiss be granted in part and denied in part. (Doc. 32.) No party has filed objections to the report and recommendation, resulting in the forfeiture of de novo review by this court. *Nara v. Frank*, 488 F.3d 187, 194 (3d Cir. 2007) (citing *Henderson v. Carlson*, 812 F.2d 874, 878–79 (3d Cir. 1987)).

Following an independent review of the report and record, and affording "reasoned consideration" to the uncontested portions of the report, *EEOC v. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (quoting *Henderson*, 812 F.2d at 879), to "satisfy [the court] that there is no clear error on the face of the record," Fed. R. Civ. P. 72(b), advisory committee notes, the court finds that Judge

Arbuckle's analysis is well-reasoned and fully supported by the record and applicable law. Accordingly, **IT IS ORDERED THAT**:

- 1) The report and recommendation, Doc. 32, is **ADOPTED** in its entirety.
- 2) The Lackawanna County Defendants' motion to dismiss, Doc. 18, is **GRANTED IN PART AND DENIED IN PART**, as follows:
  - a. Count I, 42 U.S.C. § 1983 excessive force/failure to protect, is dismissed against Defendants Lackawanna County, Lackawanna Prison Board, Lackawanna County Board of Commissioners, and John Does I–V in their official capacity. This count will proceed against John Does I–V in their individual/personal capacity only.
  - b. Count II, 42 U.S.C. § 1983 *Monell* liability, will proceed in its entirety.
  - c. Count III, Assault, is dismissed against Defendants
    Lackawanna County, Lackawanna Prison Board, Lackawanna
    County Board of Commissioners, and John Does I–V in their
    official capacity. This count will proceed against John Does I–
    V in their individual/personal capacity only.
  - d. Count IV, Battery, is dismissed against Defendants Lackawanna County, Lackawanna Prison Board, Lackawanna County Board of Commissioners, and John Does I–V in their official capacity. This count will proceed against John Does I–V in their individual/personal capacity only.
  - e. Count V, Intentional Infliction of Emotional Distress is dismissed against Defendants Lackawanna County, Lackawanna Prison Board, Lackawanna County Board of Commissioners, and John Does I–V in their official capacity. This count will proceed against John Does I–V in their individual/personal capacity only.
  - f. Count VI, Negligence, is dismissed in its entirety.

- g. Count IX, Wrongful Death, will proceed in its entirety.
- h. Count X, Survival Action, will proceed in its entirety.
- i. The punitive damages claims against Defendants Lackawanna County, Lackawanna County Prison Board, Lackawanna County Board of Commissioners, and John Does I–V in their official capacities are dismissed.

s/Jennifer P. Wilson
JENNIFER P. WILSON
United States District Court Judge
Middle District of Pennsylvania

Dated: July 18, 2022